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COUNTY OF LOS ANGELES
SHERIFF'S DEPARTMENT
A Tradition of Service

DATE: January 25, 2013
FILE NO:

OFFICE CORRESPONDENCE

FROM: MICHAEL J. ROTHANS, COMMANDER
FIELD OPERATIONS REGION II

TO: ALICIA E. AULT, CAPTAIN
INTERNAL AFFAIRS BUREAU

SUBJECT: EXECUTIVE FORCE REVIEW COMMITTEE FINDINGS:

Case Number:	FO2273934
Incident:	Significant Force
Incident Date:	September 18, 2010
Unit:	Norwalk Station
Suspect:	Joseph Frank Kennedy, MW/06-21-1962
Involved Employees:	Deputy Ryan Clinkingbeard, #[redacted] Deputy [redacted] #[redacted] Deputy Johnny Perez, #[redacted] Deputy Emma Vides, #[redacted] Deputy James Velasquez, #[redacted] Deputy Gregoria Martinez (Rodriguez), #[redacted] Deputy Mark Claahsen, #[redacted]
EFRC Date:	January 24, 2013

The Executive Force Review Committee consisting of Commander Michael Rothans, Commander David Fender, and Commander Buddy Goldman met and reviewed the above case.

FORCE POLICY RELATING TO INCIDENT:

Peace officers are entitled to use the amount of force that is reasonable and necessary to make an arrest, prevent escape, or overcome resistance.

FINDINGS:

Two deputies drove into the back parking lot of an Extended Stay America motel. They observed two individuals standing next to a parked pickup truck, one of which had a pitbull on a leash. The deputies contacted the individuals and asked for their identification.

The individual (suspect) with the dog provided a false name and asked if he could place the dog in his truck. As the suspect was putting the dog inside the truck, one of the deputies approached the suspect from behind. After the suspect secured the dog, he began reaching into his pockets and waistband. The deputy ordered the suspect to show his hands, but the suspect turned and ran from the one deputy and into the other deputy.

Both deputies went into foot pursuit of the suspect as he ran through the parking lot with his hands in his waistband. As the suspect turned a corner, the deputy stopped his pursuit in order to set up a containment. The suspect doubled back around and confronted the deputies which ultimately led to a four to five minute physical altercation. The deputies used flashlight strikes, Taser, personal weapons, and struck the suspect with handcuffs on his legs.

With the assistance of five other deputies, the suspect was handcuffed and hobbled. While being searched for weapons, deputies realized the suspect had stopped breathing. The suspect was unhandcuffed, first aid was rendered and paramedics notified. The suspect was ultimately transported to the hospital and pronounced dead.

The autopsy report from the Coroner's Office stated the cause of death was due to the combined effects of methamphetamine intoxication, hypertensive arteriosclerotic cardiovascular disease, and restraint maneuvers. Upon questioning the coroner by the Internal Affairs investigator, the coroner indicated there were multiple factors with regard to the restraint maneuvers, including fighting the suspect while on the ground, handcuffing, the hobble, and the deputies' weight placed on top of the suspect.

The Committee determined the use of force in its totality was reasonable, necessary, and justified against the resistive and assaultive suspect. The Committee also determined the tactics used by the involved personnel were within the Department's training standards.

RECOMMENDATIONS:

The Committee recommended the unit commander, Captain Patrick E. Maxwell, conduct a tactical debriefing with the involved personnel regarding the circumstances of this incident. The Committee also recommended the unit conduct in-service training with regard to the handling of multiple individuals and leaving the patrol car unsecured.

Additionally, the Committee recommended the unit commander review Deputy [redacted] use of the Taser for this incident to determine if additional Taser training is necessary. Taser records indicate some deployments were longer than five second cycles and could possibly suggest the deputy was holding his finger on the trigger and not assessing the situation before re-deployment.

Lastly, the Committee recommended the Department's Tactics and Survival Training Unit implement this type of scenario (unsecured patrol car/multiple suspects/one suspect flees) in future training sessions.

MJR:JER:jer

FO2273934

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LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

STEVE COOLEY • District Attorney
JACQUELYN LACEY • Chief Deputy District Attorney
PATRICK R. DIXON • Assistant District Attorney

JANICE L. MAURIZI • Director

February 21, 2012

Captain David Smith
Homicide Bureau
Los Angeles County Sheriff's Department
5747 Rickenbacker Road
Commerce, California 90040

Re: J.S.I.D. File #10-0712
L.A.S.D. File #010-14648-0466-145

Dear Captain Smith:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the in-custody death of Joseph Frank Kennedy. It is the conclusion of this office that Los Angeles County Sheriff's Department (LASD) Deputies [redacted] Ryan Clinkingbeard, James Velasquez, Mark Claahsen, Gregoria Rodriguez, Emma Vides, and Johnny Perez applied lawful force in detaining Kennedy and are not criminally liable for his death.

The following analysis is based on reports, CDs, cassette tapes, and photographs submitted to this office by Detectives Toni Martinez and Ed Brown of the Los Angeles County Sheriff's Department - Homicide Bureau. The District Attorney's Command Center was notified of this in-custody death on September 18, 2010 at approximately 3:45 a.m. The District Attorney Response Team, comprised of Deputy District Attorney Amy Pellman Pentz and District Attorney Senior Investigator Christopher Oppenborn, responded to the scene and was given a briefing and walk-through by Lieutenant Patrick Nelson. No departmentally compelled statements, if they exist, were considered in this analysis.

FACTUAL ANALYSIS

On September 18, 2010 at approximately 12:30 a.m., LASD Deputies Clinkingbeard and [redacted] were working the "Summer Violent Crimes Enforcement Team" in a marked black and white vehicle in uniform. Deputy Clinkingbeard was the driver and Deputy [redacted] was the right front passenger. The deputies were conducting a patrol check in the parking lot of the Extended Stay America Motel located on Firestone in the City of La Mirada.[1] As they drove, both deputies

[1] This motel is a common area for narcotics activity and the sight of several auto burglaries.

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noticed two men standing near a white Chevy pick-up truck speaking with each other in the south parking lot of the hotel. One of the men, later identified as Joseph Kennedy, was holding the leash of a large pit-bull dog.

Deputy Clinkingbeard, still inside his vehicle, asked the men their names. Kennedy, appearing nervous, gave the names "Kentaro" and then "Kenatarad," and asked the deputies if he could put the dog inside the truck. Deputy Clinkingbeard agreed and Deputy [redacted] exited the patrol vehicle and stood behind Kennedy while Kennedy placed the dog inside the truck. As he did so, Kennedy put his right hand inside his pocket or under his t-shirt and reached his left hand into his shirt pocket.[2]

[redacted] told Kennedy to get his hands out of his pockets. Kennedy replied "What are you talking about? I have nothing." Deputy [redacted] unholstered his duty weapon, pointed it at Kennedy, and again ordered him to show his hands. Kennedy failed to comply and [redacted] pushed Kennedy against the truck. In response, Kennedy pushed backwards against the truck and into [redacted] causing [redacted] to stumble back into the adjacent parked car.

Kennedy ran past Deputy Clinkingbeard, striking him with his elbow and knocking the radio microphone off his uniform. Kennedy continued northbound through the parking lot, still holding his waistband. Both deputies, concerned that Kennedy was armed with a weapon, followed on foot and ordered Kennedy to stop.

As Kennedy reached the northern portion of the parking lot, he turned and ran westbound and then southbound between parked vehicles. Clinkingbeard, the lead deputy, lost sight of Kennedy, who had doubled back and was heading toward Deputy [redacted]

Deputy [redacted] put out his hand in an attempt to stop Kennedy, and ordered him to stop, show his hands, and get on the ground. Kennedy pushed [redacted] away. During this struggle, both Kennedy and Deputy [redacted] fell to the ground. Clinkingbeard ran to their location to assist his partner.

Once down on the ground, Kennedy tucked both his hands under his body and told the deputies "I'm a fucking parolee! I'm going to kill you! I'm going to fucking kill you guys!" A physical struggle ensued between the three; the deputies attempted to control and handcuff Kennedy and Kennedy actively resisted the deputies by concealing his hands and attempting to stand up. Deputy [redacted] removed his firearm, pointed it at the back of Kennedy's head, and ordered him to stop fighting.[3] Undeterred, Kennedy grabbed [redacted] gun with his right hand. Clinkingbeard, in fear that Kennedy would make good on his threats to his and his partner's lives, unholstered his duty weapon and pointed it at Kennedy's head. Deputy Clinkingbeard could not safely fire his weapon as [redacted] struggled with Kennedy over [redacted] handgun. [redacted] was able to wrestle the gun away from Kennedy and both deputies holstered their weapons.

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[2] [redacted] was behind Kennedy, facing Kennedy's backside, as Kennedy placed the dog inside the car.
[3] It is unclear whether [redacted] deployed his taser or drew his firearm first. [redacted] believed that he removed his firearm after deploying his taser to no effect. Clinkingbeard recalled [redacted] deploying his taser after Kennedy attempted to take [redacted] firearm.

Deputy [redacted] continued to order Kennedy to stop fighting and show his hands. Deputy Clinkingbeard grabbed Kennedy's right arm and attempted to place it behind his back. Kennedy was able to pull his right hand free and again placed it under his body. Deputy [redacted] held Kennedy's left arm down with his knee and struck the left side of Kennedy's face several times. Deputy [redacted] removed his taser, told Clinkingbeard that he was going to tase Kennedy, and deployed the taser at Kennedy. Both prongs lodged in Kennedy's back in close proximity to each other. The taser did not appear to affect Kennedy.

At this point, additional units arrived and assisted Clinkingbeard and [redacted] in securing Kennedy. Deputies Claahson, Perez, Vides, Rodriguez, and Clinkingbeard held Kennedy down, removed both of Kennedy's hands from under his body, and handcuffed him. During this time, Deputy [redacted] administered several drive stuns with his taser to Kennedy's back. [redacted] did not believe the taser had any effect on Kennedy.[4] Deputy Velasquez, attempting to control Kennedy's legs, wrapped his arms around Kennedy's legs and then struck Kennedy 4-5 times on his calf with his flashlight. Deputy Rodriguez placed her left foot on top of Kennedy's left thigh. Deputies Vides, Rodriguez and Velasquez then placed a hobble restraint on Kennedy's ankles.[5] Paramedics were called as a matter of routine due to the use of force.

After Kennedy was secured, the deputies began to search him. As they did so, the deputies moved Kennedy to his side. Deputy Clinkingbeard noticed that Kennedy's eyes were partially open and that his coloring was blue. Clinkingbeard then checked for Kennedy's pulse. Finding none, the deputies removed the handcuffs and began administering chest compressions on Kennedy.

Almost immediately, Paramedics arrived, attempted additional life saving measures, and transported Kennedy to La Palma Intercommunity Hospital. The medical staff was unable to resuscitate Kennedy and Dr. Rachel Douglass pronounced Kennedy dead at 1:53 a.m.

Deputies searched the area of the chase for a weapon, but did not locate one. They did locate a clear baggie containing a black tar substance resembling heroin and another clear baggie containing an off-white crystalline substance resembling methamphetamine in the north parking lot. A search was conducted of Kennedy's room at the Extended Stay America Motel. Investigators recovered 50 hypodermic needles and syringes, a glass pipe, a pen converted into a snorting device, and a plastic container containing numerous small ziplock baggies with white residue.[6]

On September 21, 2010, Dr. Yulai Wang, M.D., conducted an examination on Kennedy's body. Dr. Wang ascribed the cause of death as "combined effect of methamphetamine intoxication,

[4] The TASER printout shows that the taser was deployed 8 times for time periods ranging from 5 seconds to 16 seconds.
[5] Kennedy was not placed in the TARP (Total Appendage Restraint Procedure) position.
[6] None of the items resembling controlled substances were analyzed by a chemist.

hypertensive arteriosclerotic cardiovascular disease, and restraint maneuvers." Kennedy had .38 micrograms per milliliter of amphetamine and 2.9 micrograms per milliliter of methamphetamine in the blood taken from his heart.

At the time of his death, Kennedy was 48 years old, measured five feet ten inches tall, and weighed 220 pounds. His criminal record includes, but is not limited to [redacted]

CONCLUSION

A police officer may use reasonable force in making an arrest or in overcoming resistance to arrest. Penal Code § 835a. Reasonableness is judged from the perspective of a reasonable officer at the scene considering the circumstances surrounding the use of force including:
1) whether the suspect poses an immediate threat to the safety to the officers or others,
2) whether the suspect is actively resisting arrest or attempting to evade arrest by flight, and
3) the severity of the crime at issue. Graham v. Connor (1989) 490 U.S. 386.

"[T]he 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." Graham, supra, at 396; see also, Scott v. Harris, (2007) 550 U.S. 372 (reaffirming the Graham reasonableness analysis for "use of force" cases in effectuating an arrest or "seizure" of a person). Finally, "[T]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments -- in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a particular situation." Graham, supra at 396-397.

The use of a taser in dart mode falls within the category of non-lethal force. Bryan v. McPherson (9th Cir. 2010) 630 F.3d 805. This use constitutes an intermediate, significant level of force that must be justified by a strong government interest that compels the employment of such force. The most important factor in Graham is whether the suspect posed an immediate threat to the safety of the officers or others. Bryan, supra, at 826. Courts may also examine "the availability of alternative methods of capturing or subduing a suspect." Smith v. City of Hemet (9th Cir. 2005) 394 F.3d 689, 701. When feasible, officers must normally provide a warning and the failure to give such a warning is a factor to consider. Bryan, supra, at 831. Finally, officers are not required to use the least intrusive means available. Rather, they must act within the range of reasonable conduct. See Scott v. Henrich (1994) 39 F.3d 912.

The evidence examined in this investigation shows that Deputies Clinkingbeard and [redacted] contacted Kennedy and asked his name. Kennedy, appearing nervous, gave the deputies an incorrect name and began reaching into his pockets. Based upon Kennedy's demeanor and these actions, the deputies were concerned that he was armed with a weapon. Deputy [redacted] ordered

Kennedy to show his hands and placed him against the truck. In response, Kennedy pushed [redacted] away, struck Clinkingbeard with his elbow, and ran away from both deputies with his hands still concealed in his pockets.

The deputies chased after Kennedy on foot. Ultimately they were able to get Kennedy down on the ground. Once on the ground, Kennedy continued to struggle and hide his hands, did not comply with orders to show his hands and stop struggling, and verbally threatened the deputies' lives. [redacted] withdrew his firearm, pointed it at Kennedy, and again ordered him to stop. Kennedy grabbed the firearm, attempting to take control of it. [redacted] was able to gain control of his gun and reholstered the weapon. He then deployed his taser at Kennedy. The taser had no effect on Kennedy and he continued to actively resist the deputies. Deputies Velasquez, Claahsen, Rodriguez, Vides and Perez arrived, helped handcuff Kennedy, and then placed his legs into a hobble device. When Kennedy was placed on his side, the deputies noticed that he was blue and discovered that he had no pulse. The deputies began to administer CPR and the paramedics continued to attempt to resuscitate Kennedy. Life saving measures were unsuccessful and Kennedy was pronounced dead shortly thereafter.

We find that Deputy [redacted] decision to use the taser, an intermediate level of force, to assist the arrest of Kennedy was reasonable under these circumstances. We further find that Deputies Clinkingbeard, Velasquez, Claahsen, Rodriguez, Vides and Perez used reasonable physical force in overcoming Kennedy's resistance. Kennedy's refusal to show his hands placed the deputies in reasonable fear that he was in possession of a weapon. His active resistance to arrest, including his attempt to steal [redacted] duty weapon, further justifies the deputies' decision to use force, including taser deployment, in arresting Kennedy.

Based upon the evidence in this case, we find that Deputies [redacted] Ryan Clinkingbeard, James Velasquez, Mark Claahsen, Gregoria Rodriguez, Emma Vides, and Johnny Perez applied lawful force in detaining Kennedy and are not criminally responsible for his death. We are therefore closing our file and will take no further action in this matter.

Very truly yours,

STEVE COOLEY
District Attorney

By [signature]
AMY PELLMAN PENTZ
Deputy District Attorney
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c: Deputy [redacted]
Deputy Ryan Clinkingbeard #[redacted]
Deputy James Velasquez #[redacted]
Deputy Mark Claahsen #[redacted]
Deputy Gregoria Rodriguez #[redacted]
Deputy Emma Vides #[redacted]
Deputy Johnny Perez #[redacted]